

National LEP Advocacy Task Force
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Mattie Condray
Senior Assistant General Counsel
Office of Legal Affairs
Legal Services Corporation
750 First Street N.E.
Washington D.C.

Dear Ms. Condray:

The undersigned participants in the National LEP Advocacy Task Force, submit these comments in response to the Legal Services Corporation's (LSC) Limited English Proficiency Guidance-Request for Comments, published in the Federal Register on January 9, 2003.

This Task Force is a group of advocates, attorneys, and community-based organizations spanning employment, education, domestic violence, health and human services, housing, and the judicial system. Our mission is to encourage recipients of federal funds, public accommodations, providing essential services, and employers to comply with the legal obligations to bridge language and cultural differences by:

- Linking advocacy groups together,
- Responding to requests for administrative or legal advocacy for the purpose of assisting in the monitoring and enforcement of existing laws and regulations including, but limited to Title VI, Title VII, and other applicable mandates,
- Developing and submitting comments upon request from a government agency or representative thereof, or from and to a non government agency or representative thereof,
- Providing Community legal education and information,
- Assisting in the provision of equal access to and participation in services, programs, and activities for Limited English Proficient clients (herein after LEP),
- Assisting in effectively implementing the requirements of civil rights laws.

Numerous LEP Task Force participants have observed that there are good intentions regarding language accessibility among LSC programs, but these

good intentions have not always translated into the concrete provision of language accessible services for LEP individuals.

The reasons for this include:

- Lack of awareness of the existence of the LEP populations.
- Lack of understanding of the barriers faced by LEP persons in accessing services.
- Lack of understanding of language access issues, such as the need for quality and professional interpreter services and recognition of the need to translate signs and written informational materials into an LEP person's primary language.
- Lack of resources.

As a result, LEP individuals remain an under-served population by numerous LSC programs.

Problems we have observed:

- LEP clients are not accessing services because they often do not know services exist.
- When LEP clients try to access services, they may (1) be unable to get past an outgoing telephone message with complicated instructions in English only and (2) be unable to effectively communicate with the intake person and/or the attorney assigned to the case.
- In some instances, legal services programs without language accessibility refer non-English speakers to other programs, even in situations where they are the appropriate agency for the services sought.
- LEP clients able to access services may receive second rate service because of poor communications with staff.

This is not to say that LSC programs are uniquely deficient in this regard. Like most recipients of federal financial assistance, LSC programs face challenges in the development and implementation of such policies and procedures.

However, LSC programs actually need to be better than other recipients regarding language accessibility since LEP individuals rely heavily on such programs to provide advocacy when LEP individuals are excluded access to other provider services because of language barriers.

In order to provide effective language access advocacy, LSC programs need first-hand experience regarding the true challenges of developing and implementing policies and procedures for language accessible services

Additionally, unless LSC programs have taken substantial steps *themselves* towards compliance, they certainly lack moral and ethical standing to be raising complaints.

Promising Practices

Task Force participants have also observed that *some* LSC programs are strongly committed to providing service and advocacy for LEP individuals. These programs have *Promising Practices* towards which other programs may look for guidance.

For example, In Southern California, the Asian Pacific American Legal Center (APALC) is leading a collaborative partnership with three LSC-funded organizations (Legal Aid Foundation of Los Angeles, Neighborhood Legal Services and Legal Aid Society of Orange County) to increase access to legal services for low-income, monolingual and LEP Asian immigrants.

The collaborative project (Asian Language Legal Intake Project or "ALLIP") serves monolingual APIs in Los Angeles and Orange Counties through the use of a centralized intake system, including an integrated telephone and web-based database system. There is one dedicated toll-free hotline for each language served (currently Chinese and Vietnamese, expanding this spring to Korean and Cambodian), connecting callers to a bilingual advocate who speaks their language and provides intake, counsel and advice as well as brief services.

If a client needs extended representation, they are referred to one of the four partner agencies based on issue and geography. ALLIP provides a more efficient system for intake and allows the legal staff – especially the bilingual attorneys – of the four organizations to focus on extended representation for clients. ALLIP thus allows more LEPs to be served overall, whether through counsel and advice, brief service or extended representation.

ALLIP fulfills a critical need because in Los Angeles County, nearly 15% of the Asian and Pacific Islander population overall lives in poverty and for the four targeted communities, poverty rates are higher, ranging from 15 to 46%. However, less than half of those eligible for services actually access legal assistance from one of the local LSC-funded agencies, due in large part to language and cultural barriers (the LEP rates for the poorest API ethnic communities are extraordinarily high -- from 60 to 70%).

As part of the development of the ALLIP project, a promising practices manual will be available in April 2003, reviewing the efforts of a wide range of organizations throughout the county seeking to better assist growing LEP populations with ever limited resources.

Another example is the National LEP Advocacy Task Force. LSC programs that have joined the Task Force are more easily able to share expertise and resources for serving and advocating for LEP individuals.

(Other examples of Promising Practices are attached)

LSC Grantees are Recipients under Title VI

As a threshold matter, LSC's request for comments questions whether LSC grantees should be considered recipients of federal financial assistance for purposes of Title VI. Federal financial assistance is defined broadly under Title VI. According to DOJ regulations:

The term Federal financial assistance includes: (1) Grants and loans of Federal funds, (2) The grant or donation of Federal property and interests in property, (3) The detail of Federal personnel, (4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

28 CFR §42.102(c).

When Federal funds are passed through from a recipient to a subrecipient, the subrecipient is also a recipient of federal financial assistance:

f) The term recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, *to whom Federal financial assistance is extended, directly or through another recipient*, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

28 CFR §42.102(f)(emphasis added).

As LSC's request for comments states, LSC is "funded through annual appropriations from Congress." These undeniably federal funds are passed on to local LSC programs. The local programs are therefore recipients under Title VI, and must comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient (LEP).

LSC Should Issue Guidance

LSC's request for comment asks whether LSC should instruct its recipients on Title VI compliance through guidance, issue regulations regarding compliance, distribute best practices information or do nothing.

We urge LSC to follow the lead of the Department of Justice and other federal agencies and issue guidance to assist its grantees in meeting their Title VI obligations. In the development of guidance, LSC we strongly urge LSC to formally consult with organizations having direct experience and considerable expertise in LEP issues.

Guidance is the most effective means for LSC to advise its recipients on how to provide meaningful access in the unique legal services program setting. This information may be particularly beneficial to grantees located in states with new or growing LEP populations.

Best practices information is not an effective substitute for guidance.

While guidance can, and should, include promising practices information, it places this information within a context that communicates its fundamental importance as a non-discrimination standard.

LSC grantees would benefit from Guidance that aids their understanding of Title VI compliance within the LSC program context.

The request for comments questions whether LSC Guidance would be duplicative or inconsistent, given that many LSC grantees receive funding from federal agencies such as DOJ, the Department of Housing and Urban Development and the Internal Revenue Service.

As explained in the DOJ Final LEP Guidance, the purpose of LEP Guidance is to provide “an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access” to LEP persons.

Regardless of their other sources of support, LSC grantees would benefit from Guidance that aids their understanding of Title VI compliance within the LSC program context.

In this respect Guidance is preferable to regulations, because it would fit within the established framework of guidance issued by funds-granting agencies to assist their recipients in meeting their statutory and regulatory obligations under Title VI.

LSC's investigative authority

LSC also questions whether it would have the ability to investigate complaints that may arise under guidance it issued. LSC regulations on termination and debarment clearly grant LSC the authority to investigate complaints that local

programs have engaged in serious violations of LSC Guidance or Title VI, as a law applicable to LSC funds:

The purpose of this rule is to: (a) Ensure that the Corporation is able to take timely action to deal with incidents of substantial noncompliance by recipients with a provision of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, a Corporation rule, regulation, guideline or instruction, or the terms and conditions of the recipient's grant or contract with the Corporation.

45 CFR §1606.1

As with violations of Section 504 of the Rehabilitation Act, violations of Title VI rise to the level of substantial noncompliance because “discriminatory practices by legal services programs interfere directly with the ability of those programs to provide high quality legal services in an efficient and effective manner.” 44 FR 55175, quoted in LSC Request for Comment at 68 FR 1212.

LSC’s Enforcement Authority

The request for comment suggests that LSC’s enforcement power under these rules is inadequate because it is limited to negotiating informal resolutions and terminating or suspending grants.

We believe that the threatened loss of LSC funding provides a major incentive for program compliance. In addition, where programs are also funded by federal agencies, the addition of LSC guidance will not cause the agencies to lose any of their enforcement power.

Finally, in many cases, an informal settlement through which a program undertakes to improve its language assistance services best meets the underlying goal of making legal services available, on a non-discriminatory basis, to persons who cannot afford them.

In the investigation and enforcement process, LSC should formally consult and/or subcontract with the National LEP Advocacy Task Force and/or other stakeholder groups having direct contact with LEP populations and expertise with LEP matters.

We thank you for the opportunity to submit these comments, and look forward to working with LSC in developing its guidance.

Sincerely,

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Promising Practices:

Pine Tree Legal Assistance in Portland, Maine has:

1. Developed LEP policies and procedures.
2. Trained staff.
3. Translated a significant portion of their website into the non-English languages.
4. Translated documents.
5. Recorded their outgoing telephone message into numerous languages, where LEP individuals may leave a message in their first language and have the call returned by a PTLA staff using an interpreter.
6. Contracted with a telephone interpreter service in order to provide prompt qualified language assistance.

<http://www.ptla.org/index.html>

Although not LSC-funded, **Community Legal Services Inc. of Philadelphia** obtained a substantial grant, now expired, to create a Language Access Project.

1. Their policy is to deliver services to clients in their preferred language.
2. They have protocols set up when bilingual staff cannot deliver direct services that provide for obtaining in-person interpreters, telephone interpreters, and translation.
3. Second language ability is a plus factor in hiring decisions.
4. There are posters and signs in the lobbies stating that interpreter services are available.
5. They have trained staff on policy and working with interpreters.
6. They have pushed LEP outreach.
7. They have engaged in work that specifically raises advocacy issues.
8. They can tabulate cases by language in a data base and monitor the data.

Specific staff people, reporting directly to the ED, are responsible for developing policy, training, advocacy and monitoring.

As a result of these proactive steps, Community Legal Service Inc. has increased intake to LEP's 50% in three years, with much higher numbers for non-Spanish speaking LEP's.

Legal Aid Services of Oregon received a technology grant from LSC to create a legal information website for low-income Oregonians. They had the entire website translated into Spanish and also have links to Russian-language materials. To the best of their knowledge, this is one of the few legal services website in the country available entirely in Spanish.

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Philadelphia Legal Assistance has developed special projects focused on outreach to and representation of domestic violence survivors who speak Spanish and Asian languages. As part of these initiatives, PLA has hired bilingual and bicultural staff to serve as casehandlers, interpreters and translators, and has supplemented in-house staff through contracts with professional language services. The result has been to increase both the quantity and quality of legal services provided to eligible clients in great need of PLA's support. Other programs are providing leadership in serving LEP clients and demonstrating that different approaches can achieve a common goal.

[Philadelphia Legal Assistance](#)